IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 33043 of 2006(H)

PETITIONER:

TMA INSTITUTE OF COUNSELLING,
AMALAGIRI PO, PERUMBAIKADU,
KOTTAYAM REPRESENTED BY ITS
DIRECTOR REV.GEORGE VARGHESE.

BY ADV. SRI.RAMESH CHERIAN JOHN

RESPONDENTS:

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1. TAHSILDAR,
KOTTAYAM.

2. STATE OF KERALA REPRESENTED BY
SECRETARY (TAXES)
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) 33043/2006

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DATED THIS, THE 12TH DECEMBER, 2006.

J U D G M E N T

Petitioner is an owner of the building which is subjected to building tax under the Kerala Building Tax Act, by Ext.P6 order. While filing the return, he has specifically pleaded that he is running an institute for counselling which is a non profit making, Religious, Charitable and Educational Institution established by the Marthoma Syrian Church of Malabar. He claimed exemption from payment of tax on grounds set out in the Annexure to the return Ext.P4. As per Section 3 of the Kerala Building Tax Act, the eligibility for exemption has to be decided by the Government and once the claim for exemption is made and unless it is bereft of any bona fide, the matter is required to be forwarded to the Government for its decision. The Tahsildar, who is the assessing authority, was therefore, not right in law in making the assessment without referring the matter to the Government for deciding as to whether petitioner is entitled to be exempted under the Act.

2. Heard the learned Government Pleader also. In the factual situation, realization of amount pursuant to Ext.P6 will stand stayed for three months. The assessing authority shall refer the matter to the Government to decide the eligibility for exemption to the petitioner. It is also open to the petitioner to file an independent representation before the Government producing all records to support his case. The Government, on receipt of the representation so made, or pursuant to the reference made by the Tahsildar, as the case may be, shall take a final decision in the matter, after giving the petitioner an opportunity of being heard, within the aforesaid period of three months. Thereafter, the matter will be governed by any decision that may be taken by the Government.

Petitioner shall produce a copy of this judgment along with a copy of the writ petition before appropriate authority for information and compliance.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-